

REMARKS

This is a response to the Decision on Appeal decided March 20, 2009. Claims 9-11 and 13-17 currently stand rejected. Upon entry of this response, Claims 9-11, and 14-17 are amended, without prejudice, waiver, or disclaimer, to define further the invention and claims 23-33 are added. No new matter is added. This provides a total of 19 claims with 3 independent and 16 dependent, so it is believed that no extra claim fees are due. Applicant respectfully requests further examination of the application in view of the following.

Claims 9, 10, 14, and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by G.B. Patent No. 2259855A of *Miller*.

Claim 11 is rejected under 35 U.S.C. §103(a) as being unpatentable over the combination of G.B. Patent No. 2259855A of *Miller* in view of U.S. Patent No. 4,493,391 of *Van Patten*.

Claim 13 is unpatentable under 35 U.S.C. §103(a) as being unpatentable over the combination of G.B. Patent No. 2259855A of *Miller* in view of U.S. Patent No. 6,059,266 of *Ascherin et al.*

Claim 16 is unpatentable under 35 U.S.C. §103(a) as being unpatentable over G.B. Patent No. 2259855A of *Miller* in view of U.S. Patent No. 4,090,584 of *Wagner*.

It is believed that the foregoing amendments and additions add no new matter to the instant application. The Applicant respectfully requests that there be reconsideration of the claims in view of the Applicant's remarks and the claim amendments.

With reference to independent claims 9, 23 and 31

Claims 9, 10, 14, and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by G.B. Patent No. 2259855A of *Miller*. Applicant respectfully traverses these rejections, but nevertheless, to advance prosecution, Applicant has amended

independent claim 9 to clarify the claimed invention using the transition phrase of “consisting of” to limit the elements in the claim scope.

In the Decision of Appeal and Final Office Action, the position was taken that *Miller* anticipates the claims. It is respectfully pointed out that the *Miller* reference discloses the use of a Prusik hitch for other purposes, which include climbing a tree and lowering a load. Obviously, the present applicant has not invented the Prusik hitch. Instead, the Applicant has discovered that through the use of a Prusik hitch, an improved safety harness arrangement can be achieved.

In the *Miller* reference, the Prusik hitch is used as a tool for climbing or lifting a load. If during the climb, the climber becomes incapacitated, the *Miller* invention provides a device that allows a person other than the climber to remotely apply pressure on the Prusik knot so as to lower the load while controlling the rate of descent of the load. However, climbing and lowering a load are not the purposes or goals of the present invention. Instead, the present invention is explicitly directed to avoiding injury should someone begin to fall from an elevated position. Once the person has fallen, climbing back up or lowering the load is **not** part of the claimed invention. In the claimed safety device, the Prusik hitch is used to arrest the user's fall. The Applicant has discovered that the Prusik hitch becomes progressively tighter as the user falls, thereby providing a progressive braking action. This progressive braking action provides improved safety in that it avoids the sudden snap or jerk at the end of the fall as happens when a conventional safety line reaches its length limit. The Prusik hitch employed in the present invention allows some “give” due to the sliding nature and progressive braking such that the falling user is progressively slowed until he is ultimately stopped, rather than being stopped all once.

Simply stated, the *Miller* rope and knot are constantly load-bearing, or in other words, the rope and the particular knot constantly support the weight of the user. The cited prior art shows active use of a knot for climbing and lowering a load but does not show passive use of a rope knot for arresting a fall. The present invention, however, relates to and claims a safety line using a knot passively for arresting a fall.

Furthermore, Miller explicitly teaches sleeve 12 is provided around the first rope 1 at a position above the prussic knot. This sleeve 12 is free to slide along the first rope

1. Attached to this sleeve 12 is a lowering rope 13, which hangs towards the ground. The Applicant respectfully asserts the addition of sleeve 12 in the *Miller* device is fundamentally different than the safety rope system claimed in independent claims 9, 23 and 31.

The transitional phrase "consisting of" excludes any element, step, or ingredient not specified in the claim. *In re Gray*, 53 F.2d 520, 11 USPQ 255 (CCPA 1931); *Ex parte Davis*, 80 USPQ 448, 450 (Bd. App. 1948) ("consisting of" defined as "closing the claim to the inclusion of materials other than those recited except for impurities ordinarily associated therewith.").

Moreover, the Applicant asserts that the *Miller* reference does not teach or suggest the limitation that "a standing rope line for attachment to a support structure above the platform, seat or other device with a first end of the standing rope line being adapted to be secured to the support structure above the platform, seat or other device, and a second end hangs towards the ground", as now claimed. In fact, the Decision on Appeal fact number 2 explicitly determines that the *Miller* device includes a first rope 1 hung over a branch of the tree, where one end 4 of the rope is tied to a carabiner 5, which is attached to the climber's harness 3, and the other end of the first rope one hangs towards the ground (page 3 line 33-page 4, line 2, Fig. 1). Applicant respectfully asserts that this is different than the claimed invention in independent claims 9, 23 and 31.

For at least these reasons, *Miller* does not anticipate claims 9, 23 or 31. "Anticipation requires the disclosure in a single prior art reference of each element of the claim under consideration." *W. L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 U.S.P.Q. 303, 313 (Fed. Cir. 1983).

Thus, Claim 9, newly added independent claims 23 and 31, and claims that depend from independent Claims 9, 23 and 31, are distinguishable from *Miller*. Accordingly, Applicant respectfully requests that the Examiner withdraw this rejection.

Rejection of Claims 11, 13, and 16 under 35 U.S.C. §103 (a)

Claim 11 stands rejected under 35 U.S.C. §103(a) as being unpatentable over *Miller* in view of *Van Patten*. Claim 13 stands rejected under 35 U.S.C. §103(a) as

being unpatentable over *Miller* in view of *Ascherin et al.* Claim 16 stands rejected under 35 U.S.C. §103(a) as being unpatentable over *Miller* in view of *Wagner*. Applicant respectfully traverses these rejections.

For at least the reasons that dependent Claims 11, 13, and 16 incorporate the limitations of Claim 9, these dependent claims are allowable for at least the reasons set forth above for the corresponding independent claim. Thus, Claims 11, 13, and 16 are also allowable. Accordingly, allowance of Claims 11, 13, and 16 is respectfully requested.

Other References Cited in the Action

In addition to the references applied in the Office Action, it is respectfully submitted that Applicant's invention, as now recited in claims 9-11, 14-17 and 23-33 are neither anticipated nor rendered obvious by any of the other references cited in the Office Action, either taken alone or in combination.

CONCLUSION

For the above reasons, the foregoing amendment places the Application in condition for allowance. Therefore, it is respectfully requested that the rejection of the claims be withdrawn and full allowance granted. Should the Examiner have any further comments or suggestions, please contact the undersigned attorney.

Respectfully submitted,
GARDNER GROFF GREENWALD &
VILLANUEVA, P.C.
/Robert E. Stachler II/
Robert E. Stachler II, Reg. No. 36,934

Customer No. 23506

Gardner Groff Greenwald & Villanueva, P.C.
2018 Powers Ferry Road, Ste. 800
Atlanta, GA 30339
Phone: (770) 984-2300
Fax: (770) 984-0098